STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CAROL LORRAINE MATHIS,

Defendant-Appellant.

UNPUBLISHED
March 15, 2005

No. 251750
Oakland Circuit Court
LC No. 02-183651-FC

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals by leave granted from her conviction of armed robbery, MCL 750.529, for which she was sentenced as a habitual offender second, MCL 769.10, to 3½ to 30 years' imprisonment. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant does not dispute that she entered a retail clothing store and placed some belts in a bag she brought in from another store. The bag aroused the suspicions of a clerk, and she alerted security. Without paying for the belts, defendant made her way for the door, and store security closed in on her. She turned, pushed the door open with her hip, pulled a knife, looked the security staff in the eyes, and said, "Back off." She backed her way into the parking lot, entered a waiting car, and escaped.

Defendant pleaded guilty to armed robbery. Before sentencing, defendant moved to withdraw her plea and quash the information, relying on *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002), which the Supreme Court decided after her plea had been accepted. The Court in *Randolph* held that to constitute a robbery, a defendant must have used force "before or contemporaneously with the felonious taking." *Id*. at 546. Defendant unsuccessfully asked the court to quash the robbery charge and modify the information to one for retail fraud and felonious assault. On appeal, defendant challenges the trial court's denial of her motions to withdraw her plea and quash the information.

MCR 6.310(B) authorizes a trial court to allow a defendant to withdraw an accepted plea before sentencing "in the interest of justice . . . ." A trial court's decision on a motion to withdraw a plea is reviewed for an abuse of discretion. *People v Davidovich*, 463 Mich 446, 451; 618 NW2d 579 (2000). A court's decision on a motion to quash the information is also reviewed for an abuse of discretion. *People v Fletcher*, 260 Mich App 531, 551-552 (2004).

In *Randolph*, the Court expressly repudiated the "transactional" approach, under which "a completed larceny may be elevated to a robbery if the defendant uses force after the taking and before reaching temporary safety." *Randolph*, *supra* at 535. Accordingly, a defendant who unlawfully took merchandise from a store without the use of force, and then punched a pursuing security guard in the store's parking lot to effect his escape, was not guilty of unarmed robbery. *Id.* at 534-535. In *People v Scruggs*, 256 Mich App 303, 305; 662 NW2d 849 (2003), we expanded this analysis to include armed robbery as well. Defendant argues that these two cases combine to invalidate her armed robbery conviction. We disagree. We find these cases distinguishable from the case at bar, and hold that defendant's actions in this case constituted an armed robbery under the statute in effect when she committed the crime.

As pointed out by then-Chief-Justice Corrigan in her concurrence in *People v Morson*, 471 Mich 248, 264-265; 685 NW2d 203 (2004)(Corrigan, C.J., concurring)(quoting the pre-amendment version of MCL 750.530), the *Randolph* decision was based on the Court's interpretation of language in the unarmed robbery statute that required a defendant to effect a taking "*by force or violence, or by assault or putting in fear*" before the taking would amount to an unarmed robbery. The armed robbery statute never conditioned its taking element with the prepositional phrase "by force," but rather stated only that an armed individual "who shall assault another, and shall feloniously rob, steal and take from his person, or in his presence, any money or other property . . . shall be guilty of a felony . . . ." *Morson*, *supra* at 263-264 (quoting the pre-amendment version of MCL 750.529). As the concurrence in *Morson* explained, the Legislature, undoubtedly prompted by *Randolph* and *Scruggs*, amended both armed and unarmed robbery statutes so that an assault to retain newly stolen property or facilitate escape indisputably satisfies the assault element of robbery. *Morson*, *supra* at 265-266 n 2; MCL 750.529; MCL 750.530. Given the persuasive concurrence in *Morson*, we question the continued viability of our decision in *Scruggs*. Nevertheless, neither *Scruggs* nor *Randolph* applies to the facts in this case, so we need not apply them here.

Both *Scruggs* and *Randolph* involved defendants who had taken personal property without any immediate interference. In *Randolph*, the defendant concealed the items in his coat and successfully spirited them out of the store. *Randolph*, *supra* at 547. It was not until he reached the parking lot that he resorted to violence to retain the pilfered goods. *Id*. Likewise, in *Scruggs* the defendant successfully reached his car with a stolen phone before he pulled a knife on pursuing security guards. *Scruggs*, *supra* at 310. Therefore, both defendants had made it out of the store with their stolen goods before they employed force to retain them. The situation at bar is different. While defendant arguably concealed the belts, she concealed them in a shopping bag. This makes her case factually closer to those involving a seller who allows the posing buyer to retain temporary custody of an item in anticipation of its purchase, only to find out the "buyer" is actually assembling the goods to facilitate a quick getaway. See *Randolph*, *supra* at 548 n 18 (Kelly, J.), 577-578 (Markman, J., dissenting). Therefore, this difference in facts, while minor, fatally weakens defendant's argument that she divested the store of possession before she reached the shop's doors. *Id*. Because she was at the doors when she pulled the knife and warded off security, her threats of force were contemporaneous to her taking, and neither *Randolph* nor *Scruggs* applies.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell